

EXECUTIVE OFFICER SUMMARY REPORT
December 11, 2002

ITEM: 12

SUBJECT: PUBLIC HEARING: Administrative Assessment for Civil Liability against Richmond American Homes for failure to pay storm water annual fees in violation of California Water Code section 13260 for the construction site located at Butterfield Stage and Nighthawk Pass, Temecula. If the discharger elects to waive their right to a hearing, the matter will be rescheduled to allow for a 30-day public review period at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2002-0382) (*Vicente Rodriguez*)

PURPOSE: To accept testimony from the public, Richmond American Homes, and Regional Board staff regarding the allegations and recommendations of civil liability in Complaint No. R9-2002-0345 (Document No. 2) prior to deciding whether to adopt Tentative Order No. R9-2002-0382.

PUBLIC NOTICE: The public was noticed of the hearing in the Agenda notice for today's meeting distributed on November 22, 2002 and by posting on the Regional Board web site.

DISCUSSION: The item before the Regional Board is to consider the adoption of an order assessing civil liability.

On November 1, 2002, *Complaint No. R9-2002-0345 for Administrative Civil Liability* (ACL) was issued by the Regional Board Executive Officer to the discharger, Richmond American Homes. The discharger is alleged to have failed to pay the required annual storm water fees in the amount of \$250 in FY 2001-2002.

BACKGROUND

The Richmond American Homes construction site is located at the Northwest corner of Butterfield Stage Rd. and Nighthawk Pass, Temecula, Riverside County, see the attached map (Supporting Document No. 1). The discharger holds waste discharge requirements prescribed by the Regional Board and, therefore, is required to pay an annual fee pursuant to Section 13260 of the California Water Code. The annual fee was computed in accordance with Water Code Section 13260 and Title 23, California Code of Regulations, Section 2200.

Item 12

The violation for non-payment is deemed to have occurred for Fiscal Year 2001-2002 from August 9, 2001 to October 15, 2002, or 432 days.

As of November 24, 2002, according to the Annual Fee Remittance System database maintained by the State Board's Division of Administrative Services-Accounting Fee Unit, the outstanding annual fee of \$250 for the fiscal year 2001-2002 annual storm water construction permit remains unpaid. This site is non-compliant with the outstanding fee. This site is an active construction site and continues to be regulated under the State Board's storm water construction permit.

Civil liability should be imposed on Richmond American Homes by the Regional Board in the amount of \$882 for the violations cited above. The civil liability is based on a greater emphasis for the first 90 days after the fee was due (assessed at \$5 per day for the first 90 days, \$2 per day from 90 to 180 days, and \$1 per day after 180 days late). This is the same rate used in other ACL complaints issued on the same date for unpaid storm water annual fees. The calculated average liability per day is approximately \$2.04.

COMPLIANCE HISTORY

Richmond American Homes was issued two ACLs last month for the same violation at two different construction sites. ACL Order No. R9-2002-0289 and ACL Order No. R9-2002-0290 were issued on November 13, 2002 for \$719 and \$618 respectively. The two sites are also located in Temecula and in the San Diego Region.

To settle this ACL, Richmond American Homes must pay the outstanding annual fee amount of \$250 and the assessed ACL amount of \$882.

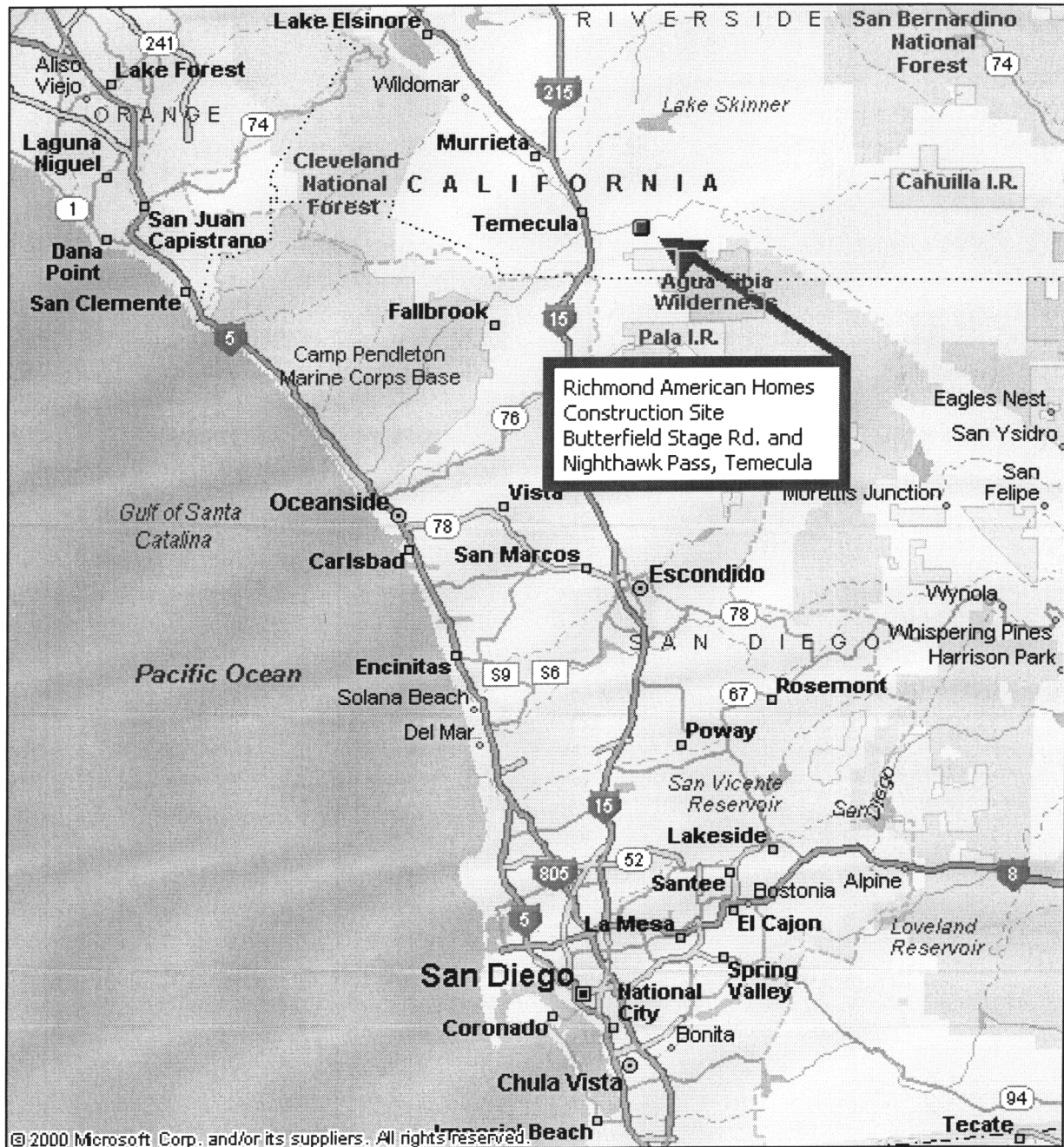
LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map of Construction Site
2. Complaint R9-2002-0345 dated November 1, 2002
3. Tentative Order No. R9-2002-0382 (**To be provided in the supplemental mailing**)

RECOMMENDATION: Adopt tentative Order No. R9-2002-0382.

ITEM 12-1



Richmond American Homes
Construction Site

ITEM 12-2

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter of)
)
John Mecklenburg)
Richmond American Homes)
104 W. Grand Ave, Ste A)
Escondido, CA 92025)
_____)

Complaint No. R9-2002-0345
For
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

- 1) Richmond American Homes owns and operates an active construction site located at Butterfield Stage and Nighthawk Pass, Temecula in Riverside County. This facility (WDID No. 9 33S309663) continues to be regulated under the State Water Resource Control Board's Order No. 99-08-DWQ *General Permit for Storm Water Discharges Associated with Construction Activity* (General Permit).
- 2) Richmond American Homes is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13261 (a) and (b) of the California Water Code.
- 3) A public hearing on this matter has been scheduled at the Regional Board meeting on

**December 11, 2002,
at the Regional Board Meeting Room,
9174 Sky Park Court, Suite 100, San Diego, California.**

- 4) The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the December meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of November 2002.
- 5) At the hearing, Richmond American Homes will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
- 6) At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

ALLEGATIONS

7) Richmond American Homes is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board).

8) The following facts are the basis for the alleged violations in this matter:

Waste discharge requirements for discharges of storm water associated with construction activities have been issued to Richmond American Homes and an annual storm water fee has been assessed accordingly. Richmond American Homes was sent the following invoices and late notices:

a) Invoice No. 1990 for the amount of \$250 sent July 10 and due August 9, 2001 for Fiscal Year 2001 – 2002 (FY 2001)

- i) First late notice sent on September 11, 2001
- ii) Second late notice sent on December 7, 2001

9) On May 9, 2002, the Regional Board notified Richmond American of the outstanding annual fee and that failure to pay required annual fees is a violation of provisions of the California Water Code and subject to Administrative Civil Liability Complaint assessing monetary penalties.

10) State Board records indicate that Richmond American Homes has failed to make payment in response to the invoices and late notices.

11) The violation for non-payment is deemed to have occurred for a total of 432 days based on the following days:

Fiscal Year 2001-2002 from August 9, 2001 to October 15, 2002, or 432 days.

MAXIMUM ACL

12) Pursuant to Section 13261(b), the total maximum assessment for which Richmond American Homes is civilly liable is \$432,000 (\$1,000 for each day of violation) for the violation cited above.

Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

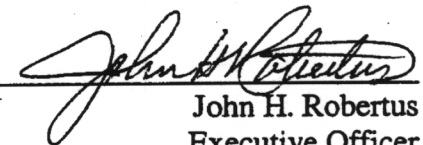
Therefore, the monetary liabilities should be calculated to negate any economic benefit realized by the discharger as a result of the violation. While the fees have

remained outstanding, the discharger has continued to enjoy the privilege of discharging waste. During this time, other dischargers have paid the required fees. The discharger has gained an economic benefit in the amount of the fee (\$250) and interest (approximately \$30, assuming 10% per year) which might have accrued on that amount. Therefore, the proposed civil liability shall be within the range of \$280 and \$432,000.

PROPOSED CIVIL LIABILITY

- 13) The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, economic savings, as well as the maximum civil liability that the Regional Board may assess. **Civil liability should be imposed on Richmond American Homes by the Regional Board in the amount of \$882 for the violations cited above.**
- 14) The proposed complaint (\$882) is a separate amount and does not include the amount due (\$250) for payment of the delinquent annual storm water fees
- 15) The Regional Board costs for investigating this incident were approximately \$250.

Dated this 1st day of November, 2002

By: 
John H. Robertus
Executive Officer